

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

LARRY MARTIN,

Petitioner,

v.

Civil No. 04-73878

Criminal No. 95-81165

UNITED STATES OF AMERICA,

Hon. Gerald E. Rosen

Respondent.

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**ORDER DENYING PETITIONER'S
MOTION FOR LEAVE TO AMEND**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on September 10, 2008

PRESENT: Honorable Gerald E. Rosen
United States District Judge

By opinion and order dated March 27, 2008, the Court adopted the Magistrate Judge's report and recommendation and denied Petitioner Larry Martin's motion to vacate, set aside, or correct his sentence. Petitioner has appealed this ruling, and this appeal remains pending. Despite this appeal, Petitioner filed the present motion with this Court on July 14, 2008, seeking leave to amend his underlying 28 U.S.C. § 2255 motion to incorporate an argument derived from the Supreme Court's recent ruling in *United States v. Santos*, 128 S. Ct. 2020 (2008).

While Petitioner evidently recognizes that his pending appeal ordinarily would operate to divest this Court of jurisdiction over this matter, *see, e.g., Lewis v. Alexander*,

987 F.2d 392, 394 (6th Cir. 1993), he seemingly suggests in his present motion that this Court's March 27, 2008 opinion and accompanying judgment of dismissal are not yet "final," in light of Petitioner's still-ongoing effort to secure a certificate of appealability. This proposition, however, cannot be squared with the March 27 opinion itself, which concludes with the express order that "a certificate of appealability is DENIED as to any appeal that Petitioner might pursue from this ruling." (3/27/2008 Op. at 8.) Accordingly, this Court has finally and conclusively resolved all matters that have been presented for its consideration in this case, and Petitioner's notice of appeal from these rulings has divested this Court of jurisdiction over this matter. It follows that the Court cannot entertain Petitioner's present motion.

For this reason,

NOW, THEREFORE, IT IS HEREBY ORDERED that Petitioner's July 14, 2008 motion for leave to amend is DENIED.

s/Gerald E. Rosen
Gerald E. Rosen
United States District Judge

Dated: September 10, 2008

I hereby certify that a copy of the foregoing document was served upon counsel of record on September 10, 2008, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager